

Response to the Statement of Facts

The Amigos Bravos Petition for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit included a "Statement of Facts". Below are responses to the sequentially numbered statements, where clarification or additional information is applicable. The provided information is a cooperative effort between DOE/LANS and Los Alamos County.

2. According to the 2010 Census, the county has a population of 17,950. The main population center is called the Los Alamos Townsite. The Townsite is a Census Designated Place (CDP) and according to the 2010 Census the population of the CDP was 12,019. According to the 2010 Census, the density of the Los Alamos Townsite CDP is 1,078.7 persons per square mile. The other densely inhabited place in the County is the community of White Rock Canyon, which is also a CDP. According to the 2010 Census the population of White Rock Canyon is 5,725 and the density is 811.8 persons per square mile. 2010 Census, <http://quickfacts.census.gov/qfd/states/35/3542320.html>

The 1990 population for Los Alamos County was 18,115, the 2000 population was 18,343, the 2010 population was 17,950 and the 2013 estimated population for Los Alamos County is 17,798. This shows that there has been very little growth to the County over the last twenty years. The persons per square mile in 2010 was 164 for the overall County.

6. The Pajarito Plateau consists of a series of finger-like mesas separated by deep east-to-west-oriented canyons cut by streams. The mesa tops range in elevation from approximately 7,800 feet on the flanks of the Jemez Mountains to about 6,200 feet at the edge of White Rock Canyon. Most Laboratory and community developments are confined to the mesa tops.

The majority of both the Laboratory and Los Alamos Townsite are confined to the mesa tops.

13. Pueblo Canyon is impaired for Gross Alpha, PCBs, Aluminum, Copper, and Zinc. Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

The report was adopted by the WQCC on September 9, 2014 and forwarded to EPA Region VI for approval.

Copper is not listed as a cause of impairment for the main stem of Pueblo Canyon from the headwaters to Los Alamos Canyon.

14. New Mexico Environment Department (NMED) data presented in NMED's Pajarito Plateau Assessment show levels of PCBs in Pueblo Canyon right in the middle of the urbanized areas at LANL and at Los Alamos Townsite (sampling station EO55) to be over 3,500 times greater than the New Mexico Human Health WQC and 16 times greater than the New Mexico Wildlife Habitat WQC.

The NMED Pajarito Plateau Assessment identifies a sample that was taken within Pueblo Canyon at the levels indicated, but this sample was not taken at sampling station EO55. Also, none of the urbanized areas at LANL discharge to Pueblo Canyon.

15. Mortandad Canyon is impaired for Aluminum, Copper and Gross Alpha. Impervious surface/parking lot runoff, post-development erosion and sedimentation, and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 238.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

16. Los Alamos Canyon within LANL property is impaired for Gross Alpha, PCBs, Aluminum, Copper, Mercury, and Zinc. *Id.* at 125 and 127.

Copper and zinc are not listed as a cause of impairment for the main stem of Los Alamos Canyon located within LANL property. In the 2014-2016 listing cycle, mercury was removed as a cause of impairment in the assessment unit below DP Canyon to the LANL boundary.

19. Sandia Canyon is impaired for PCBs, Aluminum, Copper, Gross Alpha, and Mercury. Post-development erosion and sedimentation are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 250-51.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

Mercury is not listed as a cause of impairment in Sandia Canyon. Copper is no longer listed as a cause of impairment in the lower assessment unit of Sandia Canyon.

21. Pajarito Canyon is impaired for Gross Alpha, Aluminum, PCBs, and Copper. Post-development erosion and watershed runoff following forest fire are listed as sources of impairment. 303b/305b 2014 Report, Appendix A at 240-43.

In the 2014-2016 listing cycle, the SWQB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

Copper is not listed as a cause of impairment for any of the assessment units within Pajartio Canyon.

23. The target action levels (TALs) developed in the LANL IP are based on and equivalent to New Mexico State water quality criteria. LANL IP at 3 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

37. The LANL PCB Report shows that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. The PCB Report calculated the baseline value for total PCBs in storm water runoff from the Los Alamos Townsite to be 98 ng/L, which is substantially greater than the baseline value of 11.7 ng/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.* at 49, 64.

The PCB Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters.

39. Studies have shown that motor oil accumulation on parking lots that then is discharged during storm events is a large contributor of zinc in storm water. *Id.* at 15.

The referenced LANL Alternative Compliance Request cites a study identifying that motor oil contains zinc, and that motor oil accumulating on paved surfaces contributes to an industrial facility's storm water discharge. It does not state that motor oil accumulation on parking lots that then is discharged during storm events is a large contributor of zinc in storm water.

47. The maximum value for dissolved cadmium in urban runoff samples from LANL and Los Alamos Townsite was 0.894 ug/L. *Id.* at 33. The TAL and NM WQC for dissolved cadmium is 0.6 ug/L. LANL IP at 4 (Part I).

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48. LANL sampling found concentrations of dissolved copper in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved copper in urban runoff samples from LANL and Los Alamos Townsite was 31.8ug/L and the mean value was 10.17 ug/L. Metals Report at 34. The TAL and NM WQC for dissolved copper is 4.3 ug/L. LANL IP at 4 (Part I).

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49. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of copper to receiving waters. The Metals Report calculated the baseline value for dissolved copper in storm water runoff in Los Alamos County to be 32.3 ug/L, which is substantially greater than the baseline value of 3.43 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. Metals Report at 17, 37.

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of copper to receiving waters.

50. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters. The Metals Report calculated the baseline value for dissolved zinc in storm water runoff in Los Alamos County to be 1,120 ug/L, which is substantially greater than the baseline value of 109 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters.

51. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters. The Metals Report calculated the baseline value for dissolved nickel in storm water runoff in Los Alamos County to be 7.57 ug/L, which is substantially greater than the baseline value of 3.53 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters.

52. LANL sampling found concentrations of dissolved zinc in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved zinc in urban runoff samples from LANL and Los Alamos Townsite was 882 ug/L and the mean value was 181 ug/L. *Id.* at 34. The TAL and NM WQC for dissolved copper is 42 ug/L. LANL IP 4 (Part I).

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53. LANL, in their 2013 Alternative Compliance request to EPA, reports that there is copper storm water pollution above NM WQC from urban development in Sandia Canyon. Alternative Compliance Request .25 at 15.

The referenced LANL Alternative Compliance Request reports that copper values exceed TALs. It does not state values exceed NM WQC.

55. LANL reports in their 2013 Alternative Compliance request to EPA that the primary source of PCB exceedances of permit TALs (and therefore NM WQC) at site monitoring area S-SMA-.25 is from urban runoff. *Id.* at 22.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

56. In their 2013 Alternative Compliance Request to EPA, LANL claims that installing controls at the storm water point sources in S-SMA-.25, a drainage area in the Sandia Canyon Watershed, would not lead to attainment of TALs (the same as NM WQC) because the primary source of exceedances are from storm water runoff from urban and natural background sources. *Id.* at 26, 28. LANL goes on to identify urban storm water runoff as the main source of TAL and NM WQC exceedances for zinc, copper and PCBs. *Id.* at 28.

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57. LANL identifies urban runoff from sources such as brake pad wear on parking lots, galvanized fencing, culverts and other building materials as the sources of zinc and copper exceedances of TALs (same as NM WQC). *Id.* at 31.

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58. Site-specific storm water run-on samples collected by LANL in Sandia Canyon demonstrate urban storm water runoff contributes to TAL (same as NM WQC) exceedances of PCBs. *Id.*

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59. In another drainage area in Sandia Canyon (S-SMA-2.0), LANL identifies anthropogenic urban sources as one of the sources of TAL (and NM WQC) exceedances for PCBs. Alternative Compliance Request 2 at 14.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

60. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for copper. At one specific site in Sandia Canyon, which is the focus of one of their alternative compliance request, copper exceedances from urban runoff ranged from 4.78 ug/L to 21.3 ug/L. The TAL (same as NM WQC) for copper is 4.3 ug/L. *Id.* at 16.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented to meet the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

61. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for zinc. At one specific site in Sandia Canyon (S-SMA-2.0), which is the focus of one of their alternative compliance requests, zinc exceedances from urban runoff ranged from 30.9 ug/L to 61.2 ug/L. The TAL (same as NM WQC) for zinc is 42 ug/L. *Id.* at 21.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. The LANL documents cited in the petition report exceedances of TALs and do not reference NM WQC.

63. In 2009 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) and proposed penalty of \$13,200 to Los Alamos County for violating state surface water quality standards by discharging contaminated storm water.

The County has since mitigated this site and no penalty charges were paid. In 2012, the County constructed a retention pond to prevent the release of storm water from the site. Since then, a private developer has improved the site and provided water quality measures while maintaining a retention pond to prevent the release of storm water runoff from the site.

64. NMED collected storm water samples on 8/3/07 that showed a geometric mean of 0.16316 ug/ of PCBs. They collected another set of samples on 9/5/07 that revealed a geometric mean of 0.00360 ug/L of PCBs. These samples were approximately 255 times and six times the state's PCB human health WQC. The 8/3/07 sample was 12 times the PCB wildlife habitat WQC. Press Release LA County Violations.

As stated above, this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

65. NMED sampling data in 2007 and 2006 show levels of PCBs in storm water draining off of urban areas in Los Alamos Townsite to be more than 34,000 times greater than the NM Human Health WQC. The concentration of PCBs at Los Alamos County Yard (site 1; 28CtyYdSite1) on 8/2/06 was 22.2 ug/L, which is over 34,000 times greater than the Human Health WQC. A sample taken on 7/26/07 from Timber Ridge (Timber Ridge drainage; 28TimbRg000.2) showed a PCB concentration of 0.133 ug/L, which is 207 times greater than the Human Health WQC. Timber Ridge is a development of apartment buildings in Los Alamos Townsite that drains into Los Alamos Canyon.11

As stated above, this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

66. The City of Santa Fe diverts water from the Rio Grande at its surface water diversion, the Buckman Direct Diversion Project. This surface water is critical to Santa Fe's effort to meet its current and future water needs. City of Santa Fe, *How the BDD Works*, <http://bddproject.org/about-the-bdd/how-the-bdd-works/>. Santa Fe shuts down its diversion whenever the City's monitors in Los Alamos and Pueblo Canyons detect storm water flows. City of Santa Fe, *Buckman Direct Diversion Project Water Quality FAQs*, <http://bddproject.org/water-quality/water-quality-faqs/>.

It is acknowledged that the City of Santa Fe diverts water from the Rio Grande, however the overall conclusion from the Buckman Direct Diversion Project, Independent Peer Review, Final Report from December 3, 2010 states the following:

- *In summary, stormwater discharge from LANL is episodic, and does not pose a health risk, and contaminated groundwater at LANL does not impact the water quality at the BDD intake.*
- *There is no significant health risk for BDD water system consumers.*
- *Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criterias and/or are naturally occurring.*
- *There is very little if any contribution from LANL to the Rio Grande during normal baseflow conditions.*
- *Stormwater discharge from LANL does not pose a health risk.*
- *There are no contributions from LANL groundwater to the Buckman well field.*

67. The City of Albuquerque also diverts surface water from the Rio Grande and uses it for drinking water. Albuquerque Bernalillo County Water Utility Authority, *San Juan Chama Project*, http://www.abcwua.org/San_Juan_Chama_Project.aspx. The City relies upon this diversion project, referred to as the San Juan-Chama Drinking Water Project, for the majority of the City's drinking water and projects a substantial need for this surface water far into the future.¹²

The City of Albuquerque and the Albuquerque Bernalillo Water Utility Authority have consistently used San Juan-Chama water captured in the Rio Grande with the water delivered to their customers meeting all Safe Drinking Water Quality requirements.

ENCLOSURE 2

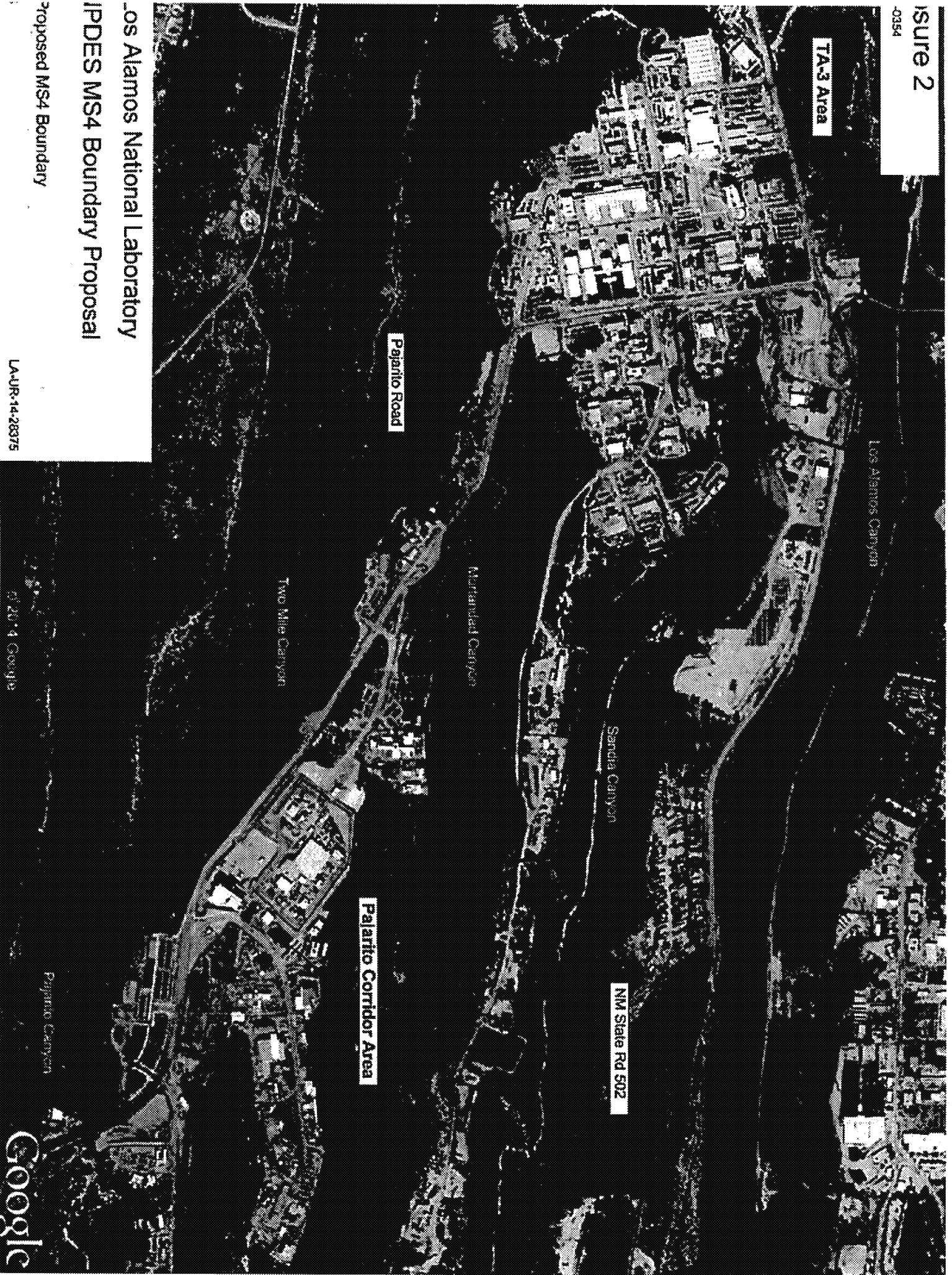
LANL NPDES MS4 Boundary Proposal

ENV-DO-14-0354

LA-UR-14-28375

Date:

NOV 20 2014



Los Alamos National Laboratory

IPDES MS4 Boundary Proposal

Proposed MS4 Boundary

LA-UR-14-28375

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Pajarito Canyon

Google



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COUNTY COUNCIL

Council Chair

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Council Vice-Chair

Kristin Henderson

Councilors

Frances M. Berting

Steven Girrens

David Izraelovitz

Rick Reiss

Pete Sheehy

COUNTY ADMINISTRATOR

Harry Burgess

October 29, 2014

Mr. Brent Larsen
Chief NPDES Permits and Technical Assistance Section
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Response to the Amigos Bravos Petition, Dated June 30th, 2014 to William K. Honker, Division Director

Dear Mr. Larsen,

Please accept this letter in response to the petition submitted by Amigos Bravos to the Environmental Protection Agency regarding an MS4 designation for Los Alamos County. This letter will focus on four main points of discussion. First, the population of Los Alamos County has shown a decline for the last thirteen years. Second, statements gathered from existing Los Alamos National Laboratory reports and studies have not been represented accurately. Third, the downstream impact of storm water runoff from Los Alamos County and the Los Alamos National Laboratory has not had an adverse impact to the various communities. Finally, if Los Alamos County and Los Alamos National Laboratory are designated as an MS4, the boundary for the designation should be discussed.

The population in 1990 for Los Alamos County was 18,115, the 2000 population was 18,343, the 2010 population was 17,950 and the 2013 estimated population for Los Alamos County was 17,798. This shows that there has been very little growth in the County over the last twenty years. In fact, there has been a decline in the population over the last thirteen years. The persons per square mile in 2010 was 164 for the overall County.

The statement of facts gathered from the various Los Alamos National Laboratory reports have not all been portrayed accurately, as you will see in the enclosed Response to the Statement of Facts document. Several of these statements have been taken out of context.

The communities downstream of Los Alamos County and Los Alamos National Laboratory have not experienced an adverse impact from the storm water runoff. The overall conclusion from the Buckman Direct Diversion (BDD) Project, Independent Peer Review, Final Report from December 3, 2010 is as following:

- Storm water discharge from Los Alamos County and Los Alamos National Laboratory is episodic, and does not pose a health risk, and contaminated groundwater at Los Alamos National Laboratory does not impact the water quality at the BDD intake.
- There is no significant health risk for BDD water system consumers.
- Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criteria's and/or are naturally occurring.
- There is very little if any contribution from Los Alamos County and Los Alamos National Laboratory to the Rio Grande during normal base flow conditions.
- Storm water discharge from Los Alamos County and Los Alamos National Laboratory does not pose a health risk.
- There are no contributions from Los Alamos County and Los Alamos National Laboratory groundwater to the Buckman well field.

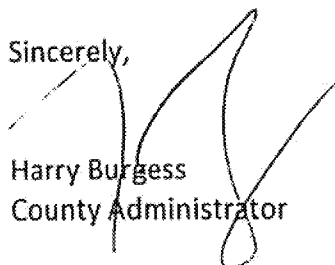
Therefore, based on the above information, Los Alamos County respectfully requests that the EPA respond to the petition with a "No Designation" finding.

However, per your request, if Los Alamos County is designated as an MS4, the County requests that the boundary of the designation be limited to the Urbanized Cluster areas be confined to the mesa tops of Los Alamos town site. Los Alamos National Laboratory will provide a similar map of their requested designated areas. Additionally, the County requests that White Rock not be included in the designation. The 2010 population density of White Rock is approximately 812 people per square mile, which is below the 1,000 people per square mile requirement for an MS4 Phase II designation. Enclosed is an exhibit of the proposed boundary limits.

Additionally, if Los Alamos County is designated as an MS4, then the County requests to be covered under a General Permit. This will allow the County to partner with Los Alamos National Laboratory and utilize the resources and expertise of each agency to meet the six minimum control measures required by an MS4 designation.

If you require additional information, please contact Bryan Aragon at 505.662.8117 or bryan.aragon@lacnm.us.

Sincerely,



Harry Burgess
County Administrator

Enclosures

Response to the Statement of Facts

Below are responses to the statement of fact submitted by Amigos Bravos. The statements which are not listed below did not require a written response or were assigned a "no comment" response. These responses are a collaborative effort between Los Alamos County and Los Alamos National Laboratory.

- ✓ 1. Los Alamos County is located in north-central New Mexico, approximately 60 miles north northeast of Albuquerque and 25 miles northwest of Santa Fe.

We concur.

2. According to the 2010 Census, the county has a population of 17,950. The main population center is called the Los Alamos Town site. The Town site is a Census Designated Place (CDP) and according to the 2010 Census the population of the CDP was 12,019. According to the 2010 Census, the density of the Los Alamos Town site CDP is 1,078.7 persons per square mile. The other densely inhabited place in the County is the community of White Rock Canyon, which is also a CDP. According to the 2010 Census the population of White Rock Canyon is 5,725 and the density is 811.8 persons per square mile. 2010 Census, <http://quickfacts.census.gov/qfd/states/35/3542320.html>.

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We concur, most of the Laboratory and Los Alamos Town site are confined to the mesa tops.

13. Pueblo Canyon is impaired for Gross Alpha, PCBs, Aluminum, Copper, and Zinc. Industrial/commercial site storm water discharge, post-development erosion and sedimentation are listed as sources of impairment.⁷

In the 2014-2016 listing cycle, the SWQCB removed previously-reported probable source lists from the Integrated Report (2014 - 2016 State of New Mexico Clean Water Act (CWA) Sections 303(d)/305(b) Integrated List of Assessed Surface Waters). These were replaced with "Source Unknown". Probable sources will be developed in TMDL planning process.

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The NMED Pajarito Plateau Assessment identifies a sample that was taken within Pueblo Canyon at the levels indicated, but this sample was not taken at sampling station EO55. Also, none of the urbanized areas at LANL discharge to Pueblo Canyon.

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30. When collecting data for the PCB report, storm water samplers were placed in ephemeral channels around the edge of urban development in Los Alamos County and LANL. No urban samplers were located below any know areas of concentrated contamination (point sources). PCB Report at 59.

The Current understanding of geo-hydrologic modeling in the regional aquifer suggests the aquifer pumped by the Buckman well field is not directly fed by the aquifer underlying the Los Alamos County localized region.

37. The LANL PCB Report shows that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. The PCB Report calculated the baseline value for total PCBs in storm water runoff from the Los Alamos Town site to be 98 ng/L, which is substantially greater than the baseline value of 11.7 ng/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.* at 49, 64.

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48. LANL sampling found concentrations of dissolved copper in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved copper in urban runoff samples from LANL and Los Alamos Town site was 31.8ug/L and the mean value was 10.17 ug/L. Metals Report at 34. The TAL and NM WQC for dissolved copper is 4.3 ug/L. LANL IP at 4 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

49. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of copper to receiving waters. The Metals Report calculated the baseline value for dissolved copper in storm water runoff in Los Alamos County to be 32.3 ug/L, which is substantially greater than the baseline value of 3.43 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. Metals Report at 17, 37.

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of copper to receiving waters.

50. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters. The Metals Report calculated the baseline value for dissolved zinc in storm water runoff in Los Alamos County to be 1,120 ug/L, which is substantially greater than the baseline value of 109 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of zinc to receiving waters.

51. The Metals Report shows that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters. The Metals Report calculated the baseline value for dissolved nickel in storm water runoff in Los Alamos County to be 7.57 ug/L, which is substantially greater than the baseline value of 3.53 ug/L that was measured for reference non-urban influenced runoff in Los Alamos County. *Id.*

The Metals Report identifies baseline values but does not state that urban development in Los Alamos County is contributing large amounts of nickel to receiving waters.

52. LANL sampling found concentrations of dissolved zinc in Los Alamos urban storm water discharges at values well above the NM WQC. The maximum value for dissolved zinc in urban runoff samples from LANL and Los Alamos Town site was 882 ug/L and the mean value was 181 ug/L. *Id.* at 34. The TAL and NM WQC for dissolved copper is 42 ug/L. LANL IP 4 (Part I).

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

53. LANL, in their 2013 Alternative Compliance request to EPA, reports that there is copper storm water pollution above NM WQC from urban development in Sandia Canyon. Alternative Compliance Request .25 at 15.

The referenced LANL Alternative Compliance Request reports that copper values exceed TALs. It does not state values exceed NM WQC.

55. LANL reports in their 2013 Alternative Compliance request to EPA that the primary source of PCB exceedances of permit TALs (and therefore NM WQC) at site monitoring area S-SMA-.25 is from urban runoff. *Id.* at 22.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

56. In their 2013 Alternative Compliance Request to EPA, LANL claims that installing controls at the storm water point sources in S-SMA-.25, a drainage area in the Sandia Canyon Watershed, would not lead to attainment of TALs (the same as NM WQC) because the primary source of exceedances are from storm water runoff from urban and natural background sources. *Id.* at 26, 28. LANL goes on to identify urban storm water runoff as the main source of TAL and NM WQC exceedances for zinc, copper and PCBs. *Id.* at 28.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

57. LANL identifies urban runoff from sources such as brake pad wear on parking lots, galvanized fencing, culverts and other building materials as the sources of zinc and copper exceedances of TALs (same as NM WQC). *Id.* at 31.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

58. Site-specific storm water run-on samples collected by LANL in Sandia Canyon demonstrate urban storm water runoff contributes to TAL (same as NM WQC) exceedances of PCBs. *Id.*

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

59. In another drainage area in Sandia Canyon (S-SMA-2.0), LANL identifies anthropogenic urban sources as one of the sources of TAL (and NM WQC) exceedances for PCBs. Alternative Compliance Request 2 at 14.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

60. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for copper. At one specific site in Sandia Canyon, which is the focus of one of their alternative compliance request, copper exceedances from urban runoff ranged from 4.78 ug/L to 21.3 ug/L. The TAL (same as NM WQC) for copper is 4.3 ug/L. *Id.* at 16.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

61. LANL identifies runoff from urban development as the likely source of TAL (and NM WQC) exceedances for zinc. At one specific site in Sandia Canyon (S-SMA-2.0), which is the focus of one of their alternative compliance requests, zinc exceedances from urban runoff ranged from 30.9 ug/L to 61.2 ug/L. The TAL (same as NM WQC) for zinc is 42 ug/L. *Id.* at 21.

Per Page 3 of Part I.C. of the LANL IP, Applicable Target Action Levels are not themselves effluent limitations, but are benchmarks to determine the effectiveness of control measures implemented the non-numeric technology based effluent limitations. LANL documents cited in this petition report exceedances of TALs and do not reference NM WQC.

63. In 2009 the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) and proposed penalty of \$13,200 to Los Alamos County for violating state surface water quality standards by discharging contaminated storm water.¹⁰

The County has since mitigated this site and no penalty charges were paid. In 2012, the County constructed a retention pond to prevent the release of storm water from the site. Since then, a private developer has improved the site and provided water quality measures while maintaining a retention pond to prevent the release of storm water runoff from the site.

64. NMED collected storm water samples on 8/3/07 that showed a geometric mean of 0.16316 ug/ of PCBs. They collected another set of samples on 9/5/07 that revealed a geometric mean of 0.00360 ug/L of PCBs. These samples were approximately 255 times and six times the state's PCB human health WQC. The 8/3/07 sample was 12 times the PCB wildlife habitat WQC. Press Release LA County Violations.

As stated above this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

65. NMED sampling data in 2007 and 2006 show levels of PCBs in storm water draining off of urban areas in Los Alamos Town site to be more than 34,000 times greater than the NM Human Health WQC. The concentration of PCBs at Los Alamos County Yard (site 1; 28CtyYdSite1) on 8/2/06 was 22.2 ug/L, which is over 34,000 times greater than the Human Health WQC. A sample taken on 7/26/07 from Timber Ridge (Timber Ridge drainage; 28TimbRg000.2) showed a PCB concentration of 0.133 ug/L, which is 207 times greater than the Human Health WQC. Timber Ridge is a development of apartment buildings in Los Alamos Town site that drains into Los Alamos Canyon.¹¹

As stated above this site has been mitigated by building a retention pond to prevent the release of storm water runoff from the site.

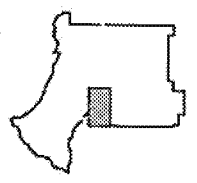
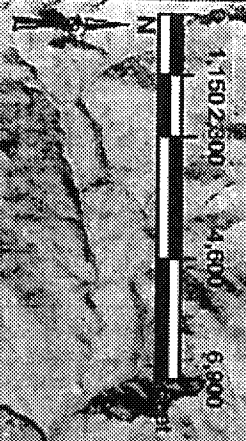
66. The City of Santa Fe diverts water from the Rio Grande at its surface water diversion, the Buckman Direct Diversion Project. This surface water is critical to Santa Fe's effort to meet its current and future water needs. City of Santa Fe, *How the BDD Works*, <http://bddproject.org/about-the-bdd/how-the-bdd-works/>. Santa Fe shuts down its diversion whenever the City's monitors in Los Alamos and Pueblo Canyons detect storm water flows. City of Santa Fe, *Buckman Direct Diversion Project Water Quality FAQs*, <http://bddproject.org/water-quality/water-quality-faqs/>.

We concur, however the overall conclusion from the Buckman Direct Diversion Project, Independent Peer Review, Final Report from December 3, 2010 states the following:

- *Storm water discharge from Los Alamos County and LANL is episodic, and does not pose a health risk, and contaminated groundwater at Los Alamos County and LANL does not impact the water quality at the BDD intake.*
- *There is no significant health risk for BDD water system consumers.*
- *Chemical and radionuclide levels in the Rio Grande are within acceptable drinking water criterias and/or are naturally occurring.*
- *There is very little if any contribution from Los Alamos County and LANL to the Rio Grande during normal base flow conditions.*
- *Storm water discharge from Los Alamos County and LANL does not pose a health risk.*
- *There are no contributions from Los Alamos County and LANL groundwater to the Buckman well field.*

67. The City of Albuquerque also diverts surface water from the Rio Grande and uses it for drinking water. Albuquerque Bernalillo County Water Utility Authority, *San Juan Chama Project*, http://www.abcwua.org/San_Juan_Chama_Project.aspx. The City relies upon this diversion project, referred to as the San Juan-Chama Drinking Water Project, for the majority of the City's drinking water and projects a substantial need for this surface water far into the future.¹²

The City of Albuquerque and the Albuquerque Bernalillo Water Utility Authority have consistently used San Juan-Chama water captured in the Rio Grande with the water delivered to their customers meeting all Safe Drinking Water Quality requirements.



Los Alamos County

Vicinity Map

Legend

- Proposed MS-4 Boundary
- Los Alamos County Boundary

Appendix 3: Public comments



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

October 18, 2019

Ken McQueen
Regional Administrator
USEPA Region 6
1201 Elm St.
Dallas, TX 75202

Re: Los Alamos Residual Designation Petition

Dear Regional Administrator McQueen:

The New Mexico Environment Department (NMED) supports the proposed MS4 designation for Los Alamos County. Designation of this particular area under the stormwater permitting program would provide, among other benefits, a comprehensive mechanism to coordinate efforts to address contaminated stormwater. Urban stormwater studies have been conducted by both Los Alamos National Laboratory and NMED. These studies confirm that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of the Lab and the County. As these areas discharge to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque, in addition to a source for irrigation uses along the Rio Grande, NMED underscores the importance of this designation to assist in the protection of human health and the environment.

As noted in the Residual Designation Petition submitted to EPA by Amigos Bravos in 2014 and EPA's March 2015 Preliminary Determination (80 FR 13852), stormwater is a significant source contributing to the continued water quality impairments documented in NMED's 2018-2020 CWA Section 303(d) List of Impaired Waters. We agree with EPA's Preliminary Determination that the regulatory criteria for making a residual designation are met in this case (40 CFR 122.26). An updated list of the current impairments is included with this letter as Appendix A, which includes all Pajarito Plateau watersheds in addition to the Rio Grande below Los Alamos.

This letter supersedes the letter dated June 15, 2015, conveying NMED's prior position on the MS4 designation. If you require any further data or assistance, please do not hesitate to reach out to my staff in the Surface Water Quality Bureau. NMED looks forward to engaging with EPA Region 6 to continue strong protections for our precious water resources in New Mexico.

Sincerely,


James C. Kenney
Cabinet Secretary

Cc: Charles Maguire, Director, Water Quality Protection Division, EPA Region 6
Rebecca Roose, Director, Water Protection Division, NMED

Attachment A:

Water Quality Impairments from NMED's 2018-2020 CWA §303(d)/§305(b) Integrated List:

Segment	WQS Reference	Impairments	TMDL/4b
Acid Canyon (Pueblo to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper, TR aluminum	None
Bayo Canyon (San Ildefonso boundary to headwaters)	20.6.4.98 NMAC	Not assessed	None
DP Canyon (Los Alamos Canyon to LANL bnd)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, TR aluminum	None
Graduation Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Dissolved copper, PCBs in water column	None
Guaje Canyon (San Ildefonso bnd to headwaters)	20.6.4.98 NMAC	Fully supporting	None
Kwage Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (DP Canyon to upper LANL bnd)	20.6.4.128 NMAC	PCB in water column, adjusted gross alpha, total mercury, total recoverable cyanide, total recoverable selenium	None
Los Alamos Canyon (Los Alamos Rsvr to headwaters)	20.6.4.127 NMAC	Fully supporting	None
Los Alamos Canyon (NM-4 to DP Canyon)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable cyanide, radium, total mercury	None
Los Alamos Canyon (San Ildefonso bnd to NM-4)	20.6.4.98 NMAC	Not assessed	None
Los Alamos Canyon (Upper LANL bnd to Los Alamos River)	20.6.4.98 NMAC	Not assessed	None
Pojoaque River (San Ildefonso bnd to Pojoaque bnd)	20.6.4.114 NMAC	PCBs in water column	None
Pueblo Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, dissolved copper	None

Pueblo Canyon (Los Alamos Canyon to Los Alamos WWTP)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, total recoverable selenium	None
Pueblo Canyon (Los Alamos WWTP to Acid Canyon)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Rendija Canyon (Guaje Canyon to headwaters)	20.6.4.98 NMAC	Not assessed	None
Rio Grande (Ohkay Owingeh bnd to Embudo Creek)	20.6.4.114 NMAC	PCB in fish tissue, turbidity	None
Rio Grande (Santa Clara Pueblo bnd to Ohkay Owingeh bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue	None
South Fork Acid Canyon (Acid Canyon to headwaters)	20.6.4.98 NMAC	Adjusted gross alpha, PCBs in water column, dissolved copper	None
Walnut Canyon (Pueblo Canyon to headwaters)	20.6.4.98 NMAC	PCBs in water column, dissolved copper	None
Alamo Canyon (Rio Grande to headwaters)	20.6.4.121 NMAC	Not assessed	None
Ancho Canyon (North Fork to headwaters)	20.6.4.128 NMAC	PCBs in water column	None
Ancho Canyon (Rio Grande to North Fork Ancho)	20.6.4.128 NMAC	PCBs in water column, total mercury	None
Arroyo de la Delfe (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, total recoverable aluminum, dissolved copper, PCBs in water column	None
Canada del Buey (San Ildefonso Pueblo bnd to LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Canada del Buey (within LANL)	20.6.4.128 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (LANL gage E256 to Burning Ground Spg)	20.6.4.126 NMAC	PCBs in water column	None

Canon de Valle (below LANL gage E256)	20.6.4.128 NMAC	Adjusted gross alpha	None
Canon de Valle (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	PCBs in water column, adjusted gross alpha	None
Canon de Valle (within LANL above Burning Ground Spr)	20.6.4.128 NMAC	Not assessed	None
Chaquehui Canyon (within LANL)	20.6.4.128 NMAC	PCBs in water column	None
Fence Canyon (above Potrillo Canyon)	20.6.4.128 NMAC	Not assessed	None
Indio Canyon (above Water Canyon)	20.6.4.128 NMAC	Not assessed	None
Mortendad Canyon (within LANL)	20.6.4.128 NMAC	Adjusted gross alpha, total mercury, PCBs in water column, dissolved copper	None
North Fork Ancho Canyon (Ancho Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Pajarito Canyon (Arroyo de la Delfe to Starmers Spring)	20.6.4.126 NMAC	Fully supporting	None
Pajarito Canyon (Rio Grande to LANL bnd)	20.6.4.98 NMAC	Fully supporting	None
Pajarito Canyon (Upper LANL bnd to headwaters)	20.6.4.99 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total recoverable cyanide, total mercury	None
Pajarito Canyon (within LANL above Starmers Gulch)	20.6.4.128 NMAC	Aluminum, adjusted gross alpha	None
Pajarito Canyon (within LANL below Arroyo de la Delfe)	20.6.4.128 NMAC	Aluminum, PCBs in water column	None
Potrillo Canyon (above Water Canyon)	20.6.4.128 NMAC	Adjusted gross alpha	None

Rio Grande (Cochiti Reservoir to San Ildefonso bnd)	20.6.4.114 NMAC	Turbidity, PCBs in fish tissue, PCBs in water column, E. coli, adjusted gross alpha, dissolved aluminum, thallium, total recoverable selenium, total recoverable cyanide	None
Rito de los Frijoles (Rio Grande to Upper Crossing)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Rito de los Frijoles (Upper crossing to headwaters)	20.6.4.121 NMAC	DDT in fish tissue, total recoverable Aluminum	None
Sandia Canyon (Sigma Canyon to Outfall 001)	20.6.4.126 NMAC	Total recoverable aluminum, PCBs in water column, dissolved copper, temperature	None
Sandia Canyon (within LANL below Sigma Canyon)	20.6.4.128 NMAC	PCBs in water column, total recoverable aluminum, adjusted gross alpha, total mercury	None
Ten Site Canyon (Mortendad Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column	None
Three Mile Canyon (Pajarito Canyon to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha	None
Two Mile Canyon (Pajarito to headwaters)	20.6.4.128 NMAC	Adjusted gross alpha, PCBs in water column, total recoverable aluminum, dissolved copper	None
Water Canyon (Area A Canyon to NM 501)	20.6.4.126 NMAC	Fully supporting	None
Water Canyon (Rio Grande to lower LANL bnd)	20.6.4.98 NMAC	Not assessed	None
Water Canyon (Upper LANL bnd to headwaters)	20.6.4.98 NMAC	Total recoverable aluminum, total mercury	None
Water Canyon (within LANL below Area A Canyon)	20.6.4.128 NMAC	Total recoverable aluminum, PCBs in water column, adjusted gross alpha, total mercury	None



P.O. Box 238, Taos, NM 87571
575.758.3474

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Submitted via email to rosborough.evelyn@epa.gov

June 11, 2015

RE: EPA's Preliminary Determination to Designate MS4s on Los Alamos National Laboratory Property and Urban Portions of Los Alamos County as Storm Water Discharges Requiring Clean Water Act Permit Coverage Pursuant to 40 CFR § 122.26(a)(9)(i)(A), 122.26(a)(9)(i)(D), and 122.32(a)(2).

Dear Ms. Rosborough:

Amigos Bravos writes in support of EPA's preliminary designation of MS4s on Los Alamos National Laboratory (LANL) property and urban areas of Los Alamos County. This preliminary designation, made in response to our June 30th, 2014 petition, is a critical first step in protecting the Rio Grande and its tributaries on the Pajarito Plateau from pollution from urban stormwater discharges at LANL and in Los Alamos County. We urge you to finalize this designation and issue a NPDES permit as quickly as possible.

Amigos Bravos supports EPA's proposed coverage area with a minor exception: the developed area south of the area proposed for coverage in the community of White Rock should also be included in the designation. This area shows up very clearly in EPA's map of proposed areas to be covered as a distinct cluster of development. Although this area may be slightly less dense than other proposed portions of Los Alamos County, it is contiguous to both the proposed areas for coverage in White Rock as well as to LANL and is considerably more dense in population than other areas in Los Alamos County. In addition, most of the urbanized areas within this portion of White Rock sit close to the edge of the canyons that flow directly into the Rio Grande. EPA should expand the area of coverage to include this developed area.

EPA's "Los Alamos County Preliminary Designation Document" does not include Amigos Bravos' Statement of Facts that was submitted as part of our petition, yet it does include LANL and Los Alamos County responses to this Statement of Facts. Amigos

Bravos believes it is appropriate to include the full Statement of Facts document in the Preliminary Designation Document.

Urban storm water pollution from LANL and Los Alamos County should be covered by an individual permit. Both the nature of the pollution and the current monitoring infrastructure that is unique to this area support the case for coverage under an individual permit. The urban storm water runoff from developed areas at LANL and the Los Alamos Townsite are additionally harmful because of LANL's history of releases. Many of the canyons on the Pajarito Plateau have old dump sites called solid waste management units (SWMUS), which continue to release pollution. Annual reports for LANL's individual industrial storm water permit (IP) detail the scope of continuing storm water exceedances from these SWMUS. Specifically, of the 246 sites for which samples were collected, 233 of them had releases that exceeded water quality standards.¹ Some of these exceedances continue to be over 32,000 times greater than water quality standards.² The urban storm water that is discharged into these canyons exacerbates and mobilizes this historic toxic pollution. The unique contamination issues associated with Los Alamos merit the individual treatment and monitoring opportunities available under an individual permit. LANL, as demonstrated by its detailed background study reports on PCBs and Metals, as well as by its extensive monitoring under the IP, has the needed monitoring infrastructure already in place as well as an extensive baseline to compare monitoring results collected under an individual MS4 permit.

An individual permit could provide for not only the needed monitoring but also for specific treatment options that are not available under the general small MS4 permit. Appropriate treatment options for Los Alamos could be similar to those proposed for the individual MS4 permit for Charles County, Maryland under which treatment of twenty percent of the County's impervious surface would be required by the end of the 5-year permit term.³

We believe that our Petition and associated Statement of Facts far exceeds the statutory and regulatory requirements to trigger action under EPA's residual designation authority. The unique nature of the site and monitoring under existing regulatory structures led to the availability of detailed monitoring data and compliance documents. This type of

¹ Los Alamos National Laboratory, *Storm Water Individual Permit Annual Report, Reporting Period: January 1–December 31, 2013, NPDES Permit No 0030759 154* (March 2014) (table 8.2), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/eprr/ERID-254067>.

² Los Alamos National Laboratory, *Renewal Application for NPDES Permit Number NM0030759, Individual Permit for Storm Water Discharges from Solid Waste Management Units and Areas of Concern, Volume 1 of 2 133* (March 2014) (Table 10), <http://permalink.lanl.gov/object/tr?what=info:lanl-repo/eprr/ERID-254864>.

³ *Maryland Department of the Environment Draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit 8* (June 18, 2014) (Draft permit for Charles County, Maryland. Permit No MD0068365, <http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/Documents/Charles%20Permit%20tentative%20determination.pdf>.

detailed information is not likely to be in place in many other areas where it is appropriate for EPA to exert its residual designation authority. All that EPA needs in order to make determinations under its residual designation authority is a understanding of the contaminants routinely found in the type of discharges to be regulated and documentation of impacts to downstream water quality such as through citation of relevant 303d/305B impairments.

Again, Amigos Bravos supports EPA's preliminary designation and urges EPA to quickly finalize this designation and move forward with issuing a MS4 permit for LANL and urbanized portions of Los Alamos County. We look forward to continued discussions and public input opportunities as the process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Conn", with a stylized flourish at the end.

Rachel Conn
Interim Executive Director
Amigos Bravos



Communities For Clean Water

June 15, 2015

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Submitted via email to rosborough.evelyn@epa.gov

Re: EPA's Preliminary Determination that Discharges of Storm Water from MS4s at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage.

Dear Ms. Rosborough:

Communities for Clean Water (CCW) is a network of organizations whose mission is to ensure that community waters impacted by Los Alamos National Laboratory (LANL) are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety (CCNS), Amigos Bravos, Honor Our Pueblo Existence (HOPE), the New Mexico Acequia Association, Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively CCW represents the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public water policy to address the toxic threats from LANL to the Pajarito Plateau and the Rio Grande. As the sacred homeland of the Pueblo Peoples it is vitally important that clean water be protected on the Pajarito Plateau. We write today to give our support to the Environmental Protection Agency's (EPA's) March 6th, 2015 Preliminary Determination that Discharges from Municipal Separate Storm Sewer Systems (MS4s) at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage (Preliminary Determination).

CCW has been working as a coalition to address contaminated storm water runoff from LANL and Los Alamos County since 2006. While we have been encouraged by some progress made under the Individual Industrial Storm water Permit to address contaminated storm water runoff, we are concerned by the overwhelming data and evidence that indicates that storm water contamination from urban sources on the Pajarito Plateau is contributing to violations of water quality standards. We are encouraged that EPA is following through on its the responsibility to ensure that the waters of the Pajarito Plateau and the Rio Grande are protected by issuing this Preliminary Determination.

CCW calls on EPA to include the small urbanized area in White Rock that has been left out of the EPA's proposed coverage area in the final MS4 coverage area. This subdivision is close to the Mortandad and White Rock canyons and therefore has the potential to release storm water discharges directly into the Pajarito Plateau tributaries as well as directly into the Rio Grande. To protect water quality this area should be included in the final coverage area.

Given the nature of the pollution and the extensive monitoring infrastructure already in place at LANL, CCW calls on EPA to move forward expeditiously with issuing an Individual MS4 permit that includes rigorous monitoring and treatment requirements. Coverage under the General Small MS4 Permit will not be adequate to address the level of contaminants found in the urban storm water discharges coming off of LANL and Los Alamos County's urbanized areas. Site-specific treatment and monitoring requirements are necessary to control these contaminated storm water discharges.

In closing, the Communities for Clean Water urge EPA to move forward expeditiously with making a Final Determination that Discharges from Municipal Separate Storm Sewer Systems (MS4s) at LANL and Los Alamos County Result in Exceedances of Water Quality Standards and Require Clean Water Act Permit Coverage.

Sincerely,

Marian Naranjo
Honor Our Pueblo Existence
mariann2@windstream.net

Kathy Sanchez and Beata Tsosie-Pena
Tewa Women United
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April 15, 2015

Evelyn Rosborough
Water Quality Protection Division
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Submitted via email to rosborough.evelyn@epa.gov

Re: Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act, 80 Fed. Reg. 13,852 (Mar. 17, 2015)

Dear Ms. Rosborough:

The Natural Resources Defense Council (NRDC) and American Rivers appreciate the opportunity to comment on the preliminary designation of stormwater discharges from sites in Los Alamos County, New Mexico. NRDC and American Rivers strongly support this exercise of EPA's authority to designate known and potential contributors to water quality violations, and we urge the agency to finalize the designation as proposed.

As EPA notes in the designation document, the Clean Water Act provides that the agency shall require a permit for any "stormwater discharge [that] contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States,"¹ a mandate that is echoed in EPA's own implementing regulations.² This "residual designation authority" (RDA) is a critical tool to ensure that problematic discharges of stormwater do not go uncontrolled.

Once EPA has made a finding that a discharge meets the statutory criterion of "contribut[ing] to a violation of a water quality standard," it must designate that discharge for regulation, and the discharger "*shall* be required to obtain a NPDES permit."³ In other words, "the Agency's residual designation authority is not optional."⁴ As EPA has explained, "designation is

¹ 33 U.S.C. § 1342(p)(2)(E).

² 40 C.F.R. § 122.26(a)(9)(i)(D).

³ *Id.* (emphasis added).

⁴ *In re Stormwater NPDES Petition*, 910 A.2d 824, 835-36 (Vt. 2006).

appropriate as soon as the adverse impacts from storm water are recognized.”⁵ EPA has not previously defined a threshold level of contribution to water quality standards violations that would suffice to make such a determination. However, the agency has advised delegated States that “it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body.”⁶ The Supreme Court of Vermont has recognized this analysis as a valid interpretation of the RDA threshold.⁷

The preliminary designation of stormwater discharges in Los Alamos County far exceeds the statutory and regulatory minimum criteria for the use of EPA’s residual designation authority. The rules’ designation trigger is satisfied upon a showing that the discharges in question are a contributing source of non-*de minimis* levels of pollutants for which receiving waters are listed as impaired. Petitioners have provided more than enough evidence to meet this test and prove that the Los Alamos County discharges are contributing to water quality standards violations.

First, the petitioners (Amigos Bravos) have more than adequately proved that the Los Alamos County discharges contain the same pollutants that are impairing receiving waters. All that EPA needed in order to make this determination was a basic understanding of the contaminants routinely found in the type of discharges to be regulated (and, in fact, the designation document cites several sources of such information, including the Nationwide Urban Runoff Program and the National Stormwater Quality Database). Amigos Bravos far exceeded this standard of proof by citing monitoring data from the particular Los Alamos County areas in question.

Further, showing that the pollutants in the designated discharges are contributing to exceedances of water quality standards can be done by evaluating the water quality downstream of the discharges. Amigos Bravos has more than adequately verified the impact of the discharges on receiving water quality by citing documented impairments downstream from the Los Alamos County areas proposed for designation. We agree with EPA that New Mexico’s 303d/305b list is an appropriate source for the agency to rely on in confirming that the Los Alamos County discharges are a source of pollution contributing to water quality standards violations.


⁵ Letter from G. Tracy Mehan III, EPA Assistant Administrator, to Elizabeth McLain, Secretary, Vermont Agency of Natural Resources at 2 (Sept. 16, 2003).

⁶ *Id.* at 3.

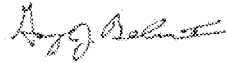
⁷ *In re Stormwater NPDES Petition*, 910 A.2d at 836 n.6.

In conclusion, we support EPA's proposal to exercise its residual designation authority and designate the Los Alamos County discharges for permitting.

Sincerely,



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Cabinet Secretary

BUTCH TONGATE
Deputy Secretary

June 15, 2015

Ms. Evelyn Rosborough
Water Quality Protection Division (6WQ-NP)
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: MS4 Designation for Los Alamos

Dear Ms. Rosborough:

In response to the United States Environmental Protection Agency's ("EPA") "Notice of Availability of Preliminary Designation of Certain Stormwater Discharges in the State of New Mexico Under the National Pollutant Discharge Elimination System of the Clean Water Act" published in the Federal Register on March 17, 2015, the New Mexico Environment Department ("NMED") provides the following comments.

NMED does not support the proposed small municipal separate storm sewer system ("MS4") designation for Los Alamos at this time. Although designation of the Los Alamos MS4 could provide a mechanism to coordinate efforts to address contaminated stormwater that is responsible for multiple water quality impairments identified on New Mexico's 303d List of Impaired Waters, NMED believes the designation is premature because the designation is not adequately substantiated and may also preempt the State efforts currently underway to address these impairments.

As you are aware, designation of an entity as a MS4, requiring a National Pollutant Discharge Elimination System ("NPDES") permit, occurs by meeting one of the applicability criteria in 40 C.F.R. § 122.26. Most commonly, an entity can be designated a MS4 pursuant to the federal Clean Water Act (33 U.S.C. §§ 1251 to 1388) based on the population of a given area or its designation as an "urban area." In this proposed action the Regional Administrator is utilizing a significantly less common method, known as the "residual designation authority," to designate portions of Los Alamos County ("County"), Los Alamos National Laboratory ("LANL"), and surrounding area as a MS4. This authority requires the Regional Administrator to determine that a discharge, or category of discharges within a geographic area, contribute to a violation of a

water quality standard or is a significant contributor of pollutants to waters of the United States. Because of the substantial implications and significant local stakeholder opposition, NMED believes that an extensive and detailed basis that clearly identifies the criteria used to determine that stormwater discharges from the County or LANL are the cause or are significantly contributing to the exceedances of water quality standards for the areas receiving is necessary. While the rule does not detail any specific requirements or criteria for the Regional Administrator to make the determination and thereby invoke the designation, NMED is concerned that this determination, as detailed below, is not sufficiently supported by the information provided in the Designation Document by EPA and is therefore premature or unfounded.

First, while NMED understands that the Regional Administrator used information from the NMED 303d/305b Integrated report in their Designation Document, it is unclear how carefully this information was considered. While it is true that significant number of waters in Los Alamos County are listed as impaired for one or for contaminants, the most recent EPA approved 303d/305 Integrated Report NMED Surface Water Quality Bureau does not find that stormwater is a source of the contaminants or pollutants; presently the probable source(s) for these listing is identified as "unknown". Perhaps more concerning is the inclusion of the community of White Rock in the Designation Document even as the two receiving waters for stormwater from this community (Canada del Buey and Pajarito Canyon) are not listed as impaired. Surely for these waters EPA cannot find that stormwater discharges are causing or contributing to a water quality impairment. NMED recommends that the EPA Regional Administrator re-evaluate all relevant data sources as part of their determination and use the most recently approved NMED 303d/305b impairment documents.

Second, NMED is also concerned by the Regional Administrator's use of the two LANL reports in making the Designation that stormwater discharges cause or contribute to water quality impairments. The conclusions of these reports have an inherent conflict of interest as they were developed by LANL to demonstrate that stormwater discharges from solid waste management units ("SWMUs") and areas of concerns ("AOCs") regulated under LANL's individual stormwater permit (Permit #NM0030759) were not the cause of water quality impairments. Further these reports have not been vetted or approved by any outside agency, including NMED or EPA. Although LANL has substantial institutional quality control and assurance in their data collection efforts, the ramifications of unverified data analysis and conclusions is so substantial for this situation that an independent review and analysis is critical. NMED recommends that the Regional Administrator conduct an independent receiving water study to determine if stormwater discharges are causing or contributing to receiving water quality exceedances.

Third, the area of the proposed MS4 has a varied geophysical nature, which includes complex geology with a canyon and mesa topography with a mix of residential, commercial and national laboratory facilities. If this Designation is truly based on water quality impairments, then a watershed approach to the designation as opposed to a piecemeal approach based on "urban clusters" and the LANL boundary would be more appropriate. As currently proposed, there are several small excluded areas that are completely surrounded by lands currently proposed for designation. It is unclear what advantage there would be to the MS4 program, or to the

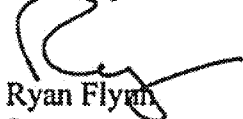
Ms. Evelyn Rosborough
Page 3
June 15, 2015

regulated parties, in excluding these and other small properties within the overall impaired watersheds on which this designation is based. As recently discussed with Region 6 staff, one of the excluded areas is the Royal Crest trailer and RV park on the rim of Sandia Canyon, and another is the Bayo Wastewater Treatment Facility (NM0020141). In addition, several SWMUs and AOCs are outside the Los Alamos County-based MS4 boundary in Santa Fe County. Depending on their current status and level of remediation, coverage of these sites may be warranted. NMED asks that the Regional Administrator provide the specific facts used to make the boundary determination and explain why these areas were not considered.

Finally, as EPA is aware, NMED is currently in the process of drafting Total Maximum Daily Load (TMDL) planning documents as well as working with LANL to develop "4B" TMDL alternatives for many of the waters considered in this Designation. It is through this public process that New Mexico works to identify the "probable source(s)" of impairment and change this from "unknown" to specific sources, potentially including stormwater discharges. Further, through the 4B TMDL alternative NMED works with local stakeholders to identify pollution control measures that are in place such that they are reasonably expected to result in attainment of the water quality standard in the near future. NMED is concerned that this Designation will preempt this on-going State effort. NMED recommends that EPA allow this State effort, working jointly with the potential permittees in this designation, sufficient time to be completed and implemented.

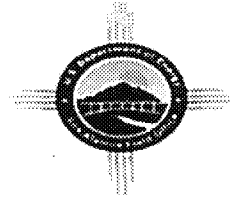
For the reasons described above, NMED believes the MS4 designation for Los Alamos is premature and requests that EPA provide additional detailed and properly vetted information upon which a designation of this type should be based. More specifically, NMED requests that the Regional Administrator provide the specific facts, evidence, and publicly adopted documents used in reaching this designation decision including what standard of proof was applied in review of such data that lead to his decision to regulate stormwater under the residual designation authority of 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i). A designation, if appropriate, should not leave a significant stakeholder such as the County with so many unanswered questions and concerns. Thank you for considering our comments. If you have any questions, please contact me at (505) 827-2855 or via email at ryan.flynn@state.nm.us.

Sincerely,



Ryan Flynn
Secretary

cc: Brent Larsen, USEPA, 6EN-WC, via email
Kevin Powers, Los Alamos County, via email
Paul Kavanaugh, Santa Fe County, via email
Ted Barber and Hashem Faidi, NMDOT, via email
Michael Saladen, LANS, via email
Gene Turner, DOE, via email
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Date: JUN 15 2015
Symbol: ENV-DO-15-0160
LA-UR: LA-UR-15-24376
Locates Action No.: N/A

Ms. Evelyn Rosborough
Environmental Protection Agency
Water Quality Protection Division (6WQ-NP)
1445 Ross Ave., Suite 1200
Dallas, TX 75202

Dear Ms. Rosborough:

Subject: Comments on Los Alamos National Laboratory (LANL) NPDES MS4 Preliminary Designation

The Department of Energy (DOE) and Los Alamos National Security (LANS) appreciate the opportunity to provide comments on EPA's NPDES Municipal Separate Storm Sewer System (MS4) preliminary designation for Los Alamos National Laboratory (LANL), which was issued on March 17, 2015. The DOE/LANS comments pertain primarily to the preliminary designation boundary for LANL, and comment details are provided in Enclosure 1. Enclosure 2 provides a map identifying a proposed boundary modification. Your review and consideration is appreciated.

Please contact Terrill Lemke of the Environmental Compliance Group (ENV-CP) at (505) 665-2397 or tlemke@lanl.gov if you have any questions or need additional information.

Sincerely,

Alison Dorries
Division Leader
Environmental Protection Division
Los Alamos National Security LLC

AMD:GET/ms

Sincerely,

Gene E. Turner
Environmental Permitting Manager
National Security Missions
Los Alamos Field Office
U.S. Department of Energy

Ms. Evelyn Rosborough
ENV-DO-15-0160

- 2 -

AMD:GET:TWL/ms

Enclosures: (1) MS4 Preliminary Designation Comments
(2) Proposed LANL MS4 Boundary

Cy: Gene E. Turner, LASO-NS-LP, (E-File)
Kirsten Laskey, LASO-SUP, (E-File)
Michael A. Lansing, PADOPS, (E-File)
Amy E. De Palma, PADOPS, (E-File)
Michael T. Brandt, ADESH, (E-File)
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ENCLOSURE 1

MS4 Preliminary Designation Comments

ENV-DO-15-0160

LA-UR-15-24376

Date: JUN 15 2015

Enclosure 1 - LANL MS4 Preliminary Designation Comments

The following comments, on behalf of Los Alamos National Security, LLC (LANS) and the United States Department of Energy (DOE), pertain to the boundary identified for Los Alamos National Laboratory (LANL) in the MS4 preliminary designation issued by EPA on March 6, 2015. LANS and DOE do not agree with the proposed boundary in EPA's preliminary designation based on two primary points: 1) The MS4 permit boundary should not encompass all of LANL but should focus on urban areas within LANL, and 2) the MS4 permit boundary should not be based on ensuring inclusion of all the NPDES Individual Permit (IP) (Permit No. NM0030759) sites, which would necessitate the full LANL boundary. Therefore, LANS and DOE have also included a modified boundary proposal to more accurately capture urban areas. Details and justification for these primary points are provided in the sections below.

1. Boundary should focus on urban areas

Both the Amigos Bravos Petition for Determination and EPA's Preliminary Designation Document repeatedly identify urban storm water runoff as the justification for and focus of the MS4 evaluation. Further, regulations requiring MS4 designations and the MS4 permit structure are based on the existence of a population and municipal infrastructure. As evidence of this:

- a. The Amigos Bravos Petition for Determination, submitted to EPA on June 30, 2014, cites urban runoff as the cause for alleged violations of water quality standards. The Petition states, "The data and studies summarized in the Statement of Facts firmly link the water quality impairment downgradient from the Pajarito Plateau to storm water runoff from urban areas". (Section II.B.2, 1st paragraph).
- b. The section of the Petition titled "Statement of Facts" cites a LANL background and baseline concentration study, LANL's self-published Environmental Report, and LANL NPDES IP Alternative Compliance requests as specific examples of exceedances of water quality standards. The cited references in all of these documents pertain to storm water data from urban sources.
- c. The Petition specifically calls out urban impacts to Los Alamos, Sandia, Mortandad, Pajarito and Pueblo Canyons (Section II.B.2). All five of these canyons receive substantial storm water runoff from urban areas.
- d. EPA's Preliminary Designation Document states, "The Petition alleges that urban storm water pollution from Los Alamos County sites, particularly urban storm water runoff from developed areas at Los Alamos National Laboratory (LANL),...is contributing to violations of New Mexico state water quality standards". (Section I, 2nd paragraph, 1st sentence)
- e. EPA's Preliminary Designation Document states, "Discharges from MS4s are comprised primarily of urban storm water". (Section II, C, 1st sentence)
- f. Each regulation relating to a requirement to obtain an MS4 permit has an express nexus to population numbers, urban areas, urban clusters and census data. Phase I of the storm water rule defined large and medium MS4s based solely on the number of people within an